

07 CIV 9241

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION,

Plaintiff,

v.

B & H FOTO and ELECTRONICS CORP :

Defendant.

COMPLAINT AND
JURY TRIAL DEMANDED

X

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful discrimination on the basis of National Origin, Hispanic and to make whole a class of Hispanic warehouse employees by B & H Foto and Electronics Corp. (and hereinafter referenced as "B & H"). This action is also filed under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct the unlawful retaliation of Joel Ortiz who was retaliated against for complaining about the discrimination against Hispanics. These allegations will be described in greater detail in paragraph seven (7) and eight (8), below.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,

1343, and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.* ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A.

2. The unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Southern District of New York.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission ("the Commission"), is an agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1), 42 U.S.C. §2000e-5(f)(1).

4. At all relevant times, B & H has continuously been a corporation under the laws of New York, is now doing business in New York, and has continuously had at least fifteen employees.

5. At all relevant times, B & H has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g), and (h) of Title VII, 42 U.S.C. §2000e-(b),(g), and (h).

STATEMENT OF CLAIMS

Discrimination

6. More than thirty days prior to the institution of this lawsuit AMAT v. B & H, EEOC Charge No. 160-2005-01808, and Ortiz v. B & H Foto and Electronics Corp., EEOC Charge No. 520-2006-00828 filed charges of discrimination with the Commission alleging

violations of Title VII by B & H. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least April 4, 2003, B & H has engaged in unlawful employment practices at its warehouse locations in violation of Sections 703(a) and 704 of Title VII, 42 U.S.C. §§ 2000e-2(a) and 2000e-3. Hispanics workers were denied of the same terms and conditions of employment that non-Hispanics receive. The practices include the payment of lower wages to Hispanic workers, denial of promotions and denial of fringe benefits under the same terms and conditions as non-Hispanics.

8. The effect of the practices complained of above in paragraph seven (7) has been to deprive a class of Hispanic warehouse workers of equal employment opportunities, and otherwise adversely affect their status as employees because of their National Origin, Hispanic.

9. The aggrieved employees suffered physical and emotional pain, including but not limited to mental anguish, humiliation, embarrassment, inconvenience and loss of enjoyment of life as the result of the unlawful employment practices complained of above in paragraph seven (7).

10. The unlawful employment practices complained of above in paragraph seven (7) were intentional.

11. The unlawful employment practices complained of above in paragraph seven (7) were done with malice and/or reckless indifference to the federally protected rights of Hispanic warehouse workers.

Retaliation

13. Since at least April 4 2005, Joel Ortiz protested acts of National Origin discrimination. B & H retaliated against Ortiz by discharging him in violation of Section 704(a) of Title VII, 42

U.S.C. §§ 2000e-3(a):

14. The effect of the practices complained of above in paragraph thirteen (13) has been to deprive Ortiz of equal employment opportunities, and otherwise adversely affect his status as an employee because he was retaliated against for opposing what he believed were discriminatory practices.

15. Ortiz suffered physical and emotional pain, including but not limited to mental anguish, humiliation, embarrassment, inconvenience, and loss of enjoyment of life as the result of the unlawful employment practices complained of above in paragraph thirteen (13).

16. The unlawful employment practices complained of above in paragraph thirteen (13) were intentional.

17. The unlawful employment practices complained of above in paragraphs thirteen (13) were done with malice and/or reckless indifference to the federally protected rights of Ortiz.

PRAAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining B&H, its officers, successors assigns and all persons in active concert or participation with it, from engaging in any employment practices which discriminate on the basis of National Origin or retaliation.

B. Order B&H to institute and carry out policies, practices and programs which provide equal employment opportunities for Hispanics employees, and which eradicate the effects of its past and present unlawful employment practices.

C. Order B&H to make whole all those individuals adversely affected by the

unlawful employment practices described above, by providing appropriate backpay with prejudgment interest, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful-place reinstatement of the aggrieved individuals.

D. Order B&H to make whole all those individuals adversely affected by the unlawful employment practices described above by providing compensation for past and future pecuniary losses, including medical expenses.

E. Order B&H to make whole all those individuals adversely affected by the unlawful employment practices described above by providing compensation for non-pecuniary losses, including pain and suffering and humiliation.

F. Order B&H to pay punitive damages to all those individuals adversely affected by the unlawful employment practices described above for its malicious and/or reckless conduct.

G. Grant such further relief as the Court deems necessary and proper.

H. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Dated: 10/16/07
New York, New York

Respectfully submitted,

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General Counsel

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

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